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SENATE BILL NO. 5072

Offered August 18, 2020

Prefiled August 17, 2020

A BILL to amend and reenact § 44-146.23 of the Code of Virginia, relating to Emergency Services and Disaster Law; immunity from liability; sheriffs' offices and regional jails.

Patrons—DeSteph and Ruff

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That § 44-146.23 of the Code of Virginia is amended and reenacted as follows:

§ 44-146.23. Immunity from liability.

A. Neither the Commonwealth, nor any political subdivision thereof, nor federal agencies, nor other public agencies, including sheriffs' offices and regional jails, or other private agencies, nor, except in cases of willful misconduct, public or private employees, nor representatives of any of them, engaged in any emergency services activities, while complying with or attempting to comply with this chapter or any rule, regulation, or executive order promulgated pursuant to the provisions of this chapter, shall be liable for the death of, or any injury to, persons or damage to property as a result of such activities. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this chapter, or under the Workers' Compensation Act (§ 65.2-100 et seq.), or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of Congress. For the purposes of the immunity conferred by this subsection, representatives of public or private employees shall include, but shall not be limited to, volunteers in state and local services who are persons who serve in a Medical Reserve Corps (MRC) unit or on a Community Emergency Response Team (CERT).

B. Any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part or parts of such real estate or premises for the purpose of sheltering persons, of emergency access or of other uses relating to emergency services shall, together with his successors in interest, if any, not be liable for negligently causing the death of, or injury to any person on or about such real estate or premises or for loss of or damage to the property of any person on or about such real estate or premises during such actual or impending disaster.

C. If any person holds a license, certificate, or other permit issued by any state, or political subdivision thereof, evidencing the meeting of qualifications for professional, mechanical, or other skills, the person, without compensation other than reimbursement for actual and necessary expenses, may render aid involving that skill in the Commonwealth during a disaster, and such person shall not be liable for negligently causing the death of, or injury to, any person or for the loss of, or damage to, the property of any person resulting from such service.

D. No person, firm or corporation which gratuitously services or repairs any electronic devices or equipment under the provisions of this section after having been approved for the purposes by the State Coordinator shall be liable for negligently causing the death of, or injury to, any person or for the loss of, or damage to, the property of any person resulting from any defect or imperfection in any such device or equipment so gratuitously serviced or repaired.

E. Notwithstanding any law to the contrary, no individual, partnership, corporation, association, or other legal entity shall be liable in civil damages as a result of acts taken voluntarily and without compensation in the course of rendering care, assistance, or advice with respect to an incident creating a danger to person, property, or the environment as a result of an actual or threatened discharge of a hazardous substance, or in preventing, cleaning up, treating, or disposing of or attempting to prevent, clean up, treat, or dispose of any such discharge, provided that such acts are taken under the direction of state or local authorities responding to the incident. This section shall not preclude liability for civil damages as a result of gross negligence, recklessness or willful misconduct. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this chapter, or under the Workers' Compensation Act (§ 65.2-100 et seq.), or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of Congress. The immunity provided by the provisions of this paragraph shall be in addition to, not in lieu of, any immunities provided by § 8.01-225.

F. No individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, fraternal organization, religious organization, charitable organization, or any other legal or

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59 commercial entity and any successor, officer, director, representative, or agent thereof, who, without
60 compensation other than reimbursement for actual and necessary expenses, provides services, goods, real
61 or personal property, or facilities:

62 1. Pursuant to a Governor-declared emergency or during a formal exercise or training of the State
63 Department of Emergency Management or a responsible county or city emergency management entity;
64 and

65 2. At the request and direction of the State Department of Emergency Management or a county or
66 city employee whose responsibilities include emergency management;

67 shall be liable for the death of or injury to any person or for the loss of, or damage to, the property
68 of any person where such death, injury, loss, or damage was proximately caused by the circumstances of
69 the actual emergency or its subsequent conditions, or the circumstances of the formal exercise or
70 training if such formal exercise or training simulates conditions of an actual emergency. This subsection
71 shall not preclude liability for civil damages as a result of gross negligence, recklessness, or willful
72 misconduct. The immunities of this subsection shall not extend to any manufacturer or to any retailer or
73 distributor substantially involved in the manufacture or design of any product or good. The provisions of
74 this subsection shall not affect the right of any person to receive benefits to which he would otherwise
75 be entitled under this chapter, or under the Workers' Compensation Act (§ 65.2-100 et seq.), or under
76 any pension law, nor the right of any such person to receive any benefits or compensation under any act
77 of Congress. The immunity provided by this subsection shall be in addition to, and not in lieu of, any
78 immunities provided by § 8.01-225.